

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

KEITH SMITH,

Case # 0071012247

Charging Party,

ORDER

-v-

OMO CONSTRUCTION,

Respondent.

Keith Smith (Smith) filed a complaint with the Department of Labor and Industry (Department) alleging that OMO Construction (OMO) discriminated against him on the basis of his age and on the basis of a perceived disability. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Smith's allegations of unlawful discrimination. The Department issued a Notice of Dismissal. Smith filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on September 18, 2007. Smith appeared and argued on his own behalf. Ben Alke appeared and argued on behalf of OMO Construction.

The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. *Chap. 28, L. 2007, New Section 6(2)*. After careful consideration, the Commission concludes the determination of the Department to dismiss the complaint in this case is not an abuse of discretion.

A party may ask a district court to review the decision of the Commission to affirm the dismissal of a complaint. *Chap. 28, L. 2007, New Section 6(3); Mont. Code Ann. § 2-4-702*.

Alternatively, if a charging party chooses to commence a civil action, charging party has 90 days after the receipt of this order to petition a district court, in the district

where the alleged violation occurred, for the appropriate relief. *Chap. 28, L. 2007, New Section 6(3)*. If a charging party fails to commence a civil action within 90 days, the claim is time barred. *Id.*

IT IS HEREBY ORDERED, that Keith Smith's objection is **overruled**. The Commission affirms the determination of the Human Rights Bureau to dismiss the complaint against OMO Construction.

DATED this ____ day of September, 2007.

Acting Chair Allen Secher
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this _____ day of September, 2007.

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Montana Human Rights Bureau